



Lake County, Florida
Office of Procurement Services

ADDENDUM #2
CITRUS RIDGE LIBRARY
JANUARY 22, 2006

ATTACHED TO THIS ADDENDUM IS THE REVISED LAKE COUNTY CONSTRUCTION CONTRACT. PLEASE REMOVE THE ORIGINAL CONTRACT ATTACHED TO THE BID DOCUMENTS AND REPLACE IT WITH THE ATTACHED CONTRACT.

Firm Name: _____ Date: _____

Signature: _____ Title: _____

Typed/Printed Name: _____

**CONTRACT FOR CONSTRUCTION
(General Contractor's Fixed Price Form)**

**CHAPTER 1
GENERAL CONTRACTOR'S AGREEMENT**

This Contract For Construction is entered into between: **Lake County, Florida, a political subdivision of the State of Florida**, hereinafter the "Owner," whose address for purposes of this Agreement is P.O. Box 7800, Tavares, Florida 32778 and _____, hereinafter the "General Contractor," whose address for purposes of this Agreement is _____. This Contract For Construction is executed under seal, and shall be effective on the date signed by the last party to do so.

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the Owner, the General Contractor and the Professional are:

OWNER:

Representative: Jim Bannon, Director, Facilities Development and Management
Address: P.O. Box 7800
City, State, Zip: Tavares, Florida 32778
Office: (352) 253-4948
Mobile: (352) 267-3830
Email: jbannon@co.lake.fl.us

GENERAL CONTRACTOR:

Representative:
Address:
City, State, Zip:
Office:
General Contractor's License #:

PROFESSIONAL (Architect):

Representative:
Address:
City, State, Zip:
Office:
Project #:

Whenever this Contract For Construction refers to "Professional" in the singular, such reference shall mean the Owner's designated representative.

OWNER'S PROJECT IDENTIFICATION INFORMATION:

Project Title:
Project Location
Project ID Number:

RECITALS

- A. The Owner intends to construct the Project and is engaging the General Contractor to perform certain labor, supervision and services and provide certain equipment, goods and materials for the Project.
- B. The Owner and General Contractor each acknowledges that it will act in good faith in carrying out its duties and obligations.
- C. The Owner's engagement of the General Contractor is based upon the General Contractor's representations to the Owner that it (i) is experienced in the type of labor and services the Owner is engaging the General Contractor to perform; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform general construction services for the Project; and (iv) has the expertise and ability to provide general construction services which will meet the Owner's objectives and requirements, and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- D. The Owner and General Contractor each acknowledges that it has reviewed and familiarized itself with this Contract for Construction, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.
- E. The Owner has engaged one or more Professionals to perform architectural and/or engineering services for the Project, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**ARTICLE 1
CONTRACT DOCUMENTS**

- 1.1 The "Contract For Construction" is comprised of the following documents:

This "Chapter 1 - General Contractor's Agreement (General Contractor's Form)" (hereafter "Chapter 1"), including the foregoing recitals A. through E., and all attached documents, appendices and addenda;

“Chapter 2 - General Contractor’s Required Services (General Contractor’s Form)” (hereafter “Chapter 2”), and all attached documents, appendices and addenda;

“Chapter 3 – General Terms and Conditions of General Contractor’s Contracts” (hereafter “Chapter 3”) and all attached documents, appendices and addenda;

The Construction Documents, now existing or issued hereafter;

Any amendments or addenda executed by the Owner and the General Contractor hereafter;

Approved Change Order(s) or field orders; and

Additional documents listed hereafter, if any:

[Identify with specificity all additional documents, or check that there are none]

☐ None

☐ Additional Documents:

1.2 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract For Construction.

1.3 The Owner shall: *[Select and complete as appropriate]*

☐ furnish the General Contractor with _____ copies and one reproducible copy of the Construction Documents.

☐ furnish the General Contractor electronically formatted Construction Documents.

☐ not furnish the General Contractor with a copy of the Construction Documents; provided, however, the General Contractor may obtain copies of the plans and specifications from Professional, if any.

ARTICLE 2 NOTICES

2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by telex, facsimile, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by telex, facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

ARTICLE 3
SCOPE OF GENERAL CONTRACTOR'S WORK

- 3.1 The General Contractor shall furnish or cause to be furnished, and pay for out of the Construction Price, all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, water, heat, utilities, transportation and other facilities necessary for proper execution and completion of its scope of the Work in accordance with all of the terms and conditions of this Contract For Construction.

ARTICLE 4
COMPENSATION OF GENERAL CONTRACTOR

- 4.1 **Construction Price.** The Owner shall pay and the General Contractor shall accept, as full and complete payment for the General Contractor's timely and complete performance of its obligations hereunder the fixed price of _____ (\$_____). The amount set forth above is the Construction Price with the following qualifications:

- 4.2 **Compensation Schedule.** Prior to execution of this Contract For Construction, the General Contractor shall prepare and present to the Owner and the designated Professional, the General Contractor's Compensation Schedule which includes, as applicable: *[Check applicable items]*

- ☐ A. Schedule Of Values for payment of the Construction Price on a lump sum basis for each of the major sixteen divisions of construction;
- ☐ B. Time Schedule for payment of the Construction Price on a lump sum basis;
- ☐ C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis; and
- ☐ D. Rates for compensation for services rendered on a time and material basis.
- ☐ E. Compensation for goods furnished on a time and material basis.
- ☐ F. Allowances.

The Compensation Schedule, once approved, shall be attached hereto and incorporated herein as Appendix A.

4.3 **Payment.** On the 25th of each month, the General Contractor shall prepare an application for payment in accordance with Article 15, Chapter 3, which reflects all construction activities completed to date, for the review of the Professional and the Owner. The Owner shall pay to the General Contractor ninety percent (90%) of the total amount approved by a Professional, withholding the balance as retainage, unless there is a dispute about the amount of compensation due the General Contractor. The date on which payment is due shall be referred to as the "Payment Date". The General Contractor may request a reduction in the retainage, but such reduction must be approved by the Owner. The General Contractor shall be required to submit an updated Critical Path Method (CPM) schedule with the monthly applications for payment. The CPM is a requirement for payment. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received. Prior to final payment the General Contractor shall provide all contract close out documents including but not limited to as-builts, operating and maintenance manuals, and warranties. Additionally, the General Contractor must complete all punch-list items prior to final payment. The Owner shall make all payments in accordance with Part VII, Chapter 218, Florida Statutes (2005), entitled the Florida Prompt Payment Act.

4.3.1 If the Contract Amount exceeds \$200,000, the General Contractor shall prepare a list of items to be rendered complete, satisfactory, and acceptable within thirty (30) calendar days after reaching substantial completion. Failure of the General Contractor to include any corrective work or pending items not yet completed on the list developed pursuant to this section does not alter the responsibility of the General Contractor to complete all construction services set forth herein. Upon completion of all items on the list, the General Contractor may submit a payment request with its next monthly invoice for all remaining retainage withheld by the Owner. If a good-faith dispute exists as to whether one or more items have been completed pursuant to this Contract for Construction, the Owner may continue to withhold an amount not to exceed 150% of the total costs to complete the remaining items. The General Contractor's project representative shall be required to review these estimates with the Owner and sign the estimate in agreement.

4.4 **Compensation For Change Orders.**

4.4.1 For change orders directed by a Professional to be performed by the General Contractor on a time and materials basis pursuant to Subparagraph 9.5.1 of Chapter 3, the General Contractor shall be reimbursed the actual incurred cost and expense plus a markup of ten percent (10%) for the change order Work performed by its forces.

4.4.2 When additional Work by the General Contractor's subcontractors and suppliers is required and approved pursuant to Subparagraph 9.5.3 of Chapter 3, the General Contractor shall be reimbursed the actual incurred costs and expenses paid to those subcontractors and suppliers, plus a markup of five percent (5%). Subcontractor markup shall not exceed ten percent (10%).

4.4.3 If the General Contractor disputes a change order decision pursuant to Paragraph 9.7 of Chapter 3, it must give the Owner its written notice of dispute, including the reasons therefore, within seven (7) calendar days of the disputed

decision.

- 4.5 **Liquidated Damages.** If liquidated damages are assessed pursuant to Chapter 3, Article 17, such damages shall be imposed where the delay to the Substantial or Final Completion date of a phase is due to the fault of the General Contractor, and are calculated at the rate of _____(\$_____) Dollars per calendar day for failure to meet the required date of Substantial Completion, or _____(____%) percent thereof for failure to meet the required date of Final Completion. Liquidated damages are the sole remedy for delays caused by General Contractor, and the parties agree are not being assessed as a penalty.

ARTICLE 5 SPECIFIC INSURANCE REQUIREMENTS

- 5.1 The General Contractor shall purchase and maintain, at its expense, from a company or companies authorized to do business in the State of Florida, insurance policies containing the following selected types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Construction by the General Contractor or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:
- (i) Workers' Compensation, Disability Benefit, or similar employee benefit act coverage, and employer's liability coverage, as required by the state in which the Project is located.
 - (ii) Commercial General Liability with a \$_____ combined single limit for each occurrence to include the following coverage: Operations, Contractual Liability covering the Contract, Broad Form Property Damage, Products, Completed Operations and X, C, U coverage.
 - (iii) Commercial Comprehensive Automobile Liability which includes contractual liability coverage and coverage for all owned, hired and non-owned vehicles with limits of not less than Three Hundred Thousand Dollars (\$300,000) combined single limit or \$100,000 Bodily Injury (per person), \$300,000 Bodily Injury (per accident); and \$100,000 Property Damage.
 - (iv) The General Contractor, prior to notice to proceed or commencement of the work, whichever occurs first, shall maintain Builder's Risk insurance providing coverage to protect the interests of the Owner, General Contractor, and subcontractors, property in transit, and property on or off-premises, which shall become part of the building or project. Property purchased by the Owner through the Sales Tax Recovery Program shall be insured under this provision by the General Contractor upon delivery of the property to the job site. Coverage shall be written on an All-Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum. Any flat deductible(s)

shall not exceed \$25,000, any wind percentage deductible (when applicable) shall not exceed ten percent (10%); and any flood sub limit shall not be less than 25% of the projected completed value of the Project. The General Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event building is occupied in whole or in part, or put to its intended use, or partially accepted by the Owner. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Owner's interest in the building ceases, or the building is accepted or insured by the Owner.

- (v) Subcontractors Insurance shall be the responsibility of the General Contractor. The General Contractor shall ensure that subcontractors are properly insured to meet the above requirements before permitting them to commence work on the Project.
- (vi) Certificates of insurance shall provide for a minimum of thirty (30) calendar days prior written notice to the Owner of any change or cancellation of the required insurance. The Certificates shall identify the contract number in the Description of Operations section of the Certificate and the Certificate holder shall be: Lake County, A political subdivision of the State of Florida and the Board of County Commissioners, P.O. Box 7800, Tavares, Florida 32778.
- (vii) All deductibles or self-insured retention shall appear on the Certificate and shall be subject to approval by the Owner. At the option of the Owner, the insurer shall reduce or eliminate such deductible or self-insured retention; or the General Contractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses. The Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the General Contractor and/or subcontractor providing the insurance.
- (viii) Failure to obtain and maintain such insurance as set out above shall be considered a breach of contract and may result in termination of this contract for default.
- (iv) The insurance coverage enumerated above constitutes the minimum requirements and said enumeration shall in no way lessen or limit the liability of the General Contractor under the terms of the Contract. The General Contractor may procure and maintain at his own expense any additional insurance that in his judgment may be necessary for his proper protection in the performance of the work.

ARTICLE 6

PERSONNEL, SUBCONTRACTOR, SUPPLIER AND CONSULTANT CHARTS

- 6.1 The General Contractor shall prepare and attach as Appendix B to this Chapter the General Contractor's Personnel Chart which lists by name, job category and

responsibility the General Contractor's primary employees who will work on the Project. The General Contractor shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

- 6.2 The General Contractor (i) shall prepare and attach as Appendix C to this Chapter the General Contractor's Subcontractors And Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by the General Contractor to provide goods or services with respect to the Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; and (iii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

ARTICLE 7 CONSTRUCTION SCHEDULE AND SPECIFIC BOND REQUIREMENTS

7.1 Time For Performance.

- 7.1.1 **Commencement Of Construction.** The General Contractor shall commence construction of its scope of the Work within ten (10) calendar days of receipt of the Notice To Proceed, hereinafter the "Commencement Date."
- 7.1.2. **Substantial Completion.** The General Contractor shall accomplish Substantial Completion of its scope of the Work on or before _____ (____) calendar days (the "required date of Substantial Completion").
- 7.1.3. **Final Completion.** The General contractor shall accomplish Final Completion of its scope of the Work within thirty (30) calendar days of the issuance of the Certificate of Substantial Completion, hereinafter the "required date of Final Completion".

7.2 Construction Schedule. The General Contractor shall *[Select and complete as appropriate]*

- ☐ not less than _____ calendar days after execution of this Chapter 1, or
- ☐ no later than ten (10) calendar days after issuance of the Notice to Proceed

prepare and submit a final Construction Schedule to the Owner and the Professional for their review and acceptance pursuant to Chapter 3, Paragraph 16.1 of this Contract For Construction.

7.3 Bond Requirements. *[Check one box in each paragraph]*

- 7.3.1 The General Contractor shall be required to provide payment and performance bonds. The amount of the premiums for such bonds shall be included in the

Construction Price. Performance and Payment Bonds shall be 100% of the contract amount and shall be executed on forms provided by the Owner. All original Performance and Payment Bonds will be submitted to Lake County Procurement Services, for recording in the public records of Lake County, Florida, at the cost of the General Contractor. The bonds will be acceptable to the Owner only if the following conditions are satisfied:

- (i) The Surety is licensed to do business in the State of Florida;
- (ii) The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;
- (iii) The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the contract is issued;
- (iv) The Surety has a current rating of A or A- as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., if the contract price exceeds \$500,000;
- (v) The Surety is otherwise in compliance with the Florida Insurance Code; and
- (vi) The Surety holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. ss9304.

If the Surety for any bond furnished by the General Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by this Agreement, the General Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

7.3.2 The General Contractor [] shall [] shall not be required to provide a maintenance bond.

ARTICLE 8 AMENDMENTS TO CHAPTER 3

8.1 The following additions to, deletions from and/or modifications to the specifically referenced articles and paragraphs of Chapter 3 shall take precedence over the provisions of those referenced articles and paragraphs as follows:

X None

Contract for Construction Between Lake County, Florida and _____ for the
_____; ITB # 06-_____.

GENERAL CONTRACTOR

Name: _____
Title: _____

COUNTY

ATTEST:

LAKE COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

James C. Watkins, Clerk
of the Board of County
Commissioners of Lake
County, Florida

Catherine C. Hanson
Chairman

This _____ day of _____, 2006

Approved as to form and legality:

Sanford A. Minkoff
County Attorney

APPENDIX A
GENERAL CONTRACTOR'S COMPENSATION SCHEDULE

[Insert information as appropriate based on payment method selected]

- A. Schedule of Values for payment of the Construction Price on a lump sum basis
- B. Time schedule for payment of the Construction Price on a lump sum basis

APPENDIX B

GENERAL CONTRACTOR'S PERSONNEL CHART

[Insert information as required]

For each of the General Contractor's primary employees working on the Project, list:

- A. Name
- B. Job Category
- C. Responsibility

**APPENDIX C
GENERAL CONTRACTOR'S
SUBCONTRACTORS AND SUPPLIERS CHART**

[Insert information as required]

CHAPTER 2 GENERAL CONTRACTOR'S REQUIRED SERVICES

ARTICLE 1 GENERAL PROJECT SERVICES

- 1.1 **Essential Services.** The General Contractor agrees to provide all services required to professionally complete its Scope of Services in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.
- 1.2 **Compliance With Contractual Requirements.** At all times the General Contractor is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Contract For Construction.
- 1.3 **Cooperative Effort.** The General Contractor shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 **Relationship To Professional.** The Owner's designated Professional will represent the Owner in dealing with the General Contractor on all design and technical matters, and will administer this Contract For Construction. Unless otherwise directed by the Owner, the Owner and the General Contractor shall communicate with each other in the first instance through the designated Professional. The Owner's instructions to the General Contractor will be issued through the designated Professional.
- 1.5 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 2 PRE-CONSTRUCTION SERVICES

- 2.1 **Construction Documents Review.**
- 2.1.1 Prior to commencement of construction activities the General Contractor shall review the Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness to identify:
- (i) conflicts, omissions or overlaps, and unusual design details affecting construction cost and schedules;
 - (ii) notify the Owner and the Professional in writing of any variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations of which it is aware; and

- (iii) factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives.
- 2.1.2 Upon completion of its review of the Construction Documents, the General Contractor shall:
 - (i) notify the Professional in writing of all problems, conflicts, defects, omissions, overlaps or deficiencies of which it became aware; and
 - (ii) assist the Professional with the resolution of the identified problems, conflicts, defects, omissions, overlaps and deficiencies.
- 2.2 **Scheduling.** The General Contractor understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The General Contractor shall timely prepare and submit the Construction Schedule for the Owner's review and approval.
- 2.3. **Additional Or Modified Required Services.** In the event the site or building conditions warrant a change in the specifications, the General Contractor shall notify the Professional and the Owner in writing within twenty-four (24) hours. The claim shall be reviewed and approved prior to the commencement of any additional work. In the event the Owner requests additional work, the General Contractor shall prepare a request for a Change Order which identifies the additional work and the cost of the work prior to the commencement of the work. The General Contractor shall commence with the additional work only after an approved Change Order is returned to the General Contractor.

ARTICLE 3

CONSTRUCTION SERVICES

3.1 Construction Supervision.

- 3.1.1 The General Contractor shall supervise and direct its scope of the Work at the Site. The General Contractor shall, at a minimum:
 - (i) provide an on-site job superintendent, who shall speak, read and write English, and who shall supervise all trades and direct all construction activities, establish and maintain construction schedules and submit to the Owner daily progress reports. The superintendent shall not be a hands-on tradesman. The Owner shall retain the authority to remove the superintendent with or without cause with two (2) calendar days written notice. The superintendent shall stay on the job through 100% of construction and final punch-list items. The superintendent shall additionally be responsible to coordinate the safety program at the job site. Any person employed by the General Contractor or a subcontractor who is found to be conducting themselves in a detrimental manner as determined by the Owner shall be removed from the job site immediately upon notification to the superintendent.

- (ii) provide an on-site coordinator who shall speak, read and write English, and who shall be responsible for reviewing and submitting project submittals, change orders, pay requests, and like items. The Owner shall retain the authority to remove the coordinator with or without cause with two (2) calendar days written notice to the superintendent. The coordinator shall stay on the job through 100% of construction and final punch-list items.
 - (iii) coordinate trade contractors and suppliers, and supervise site construction services.
 - (iv) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract For Construction.
 - (v) check and review shop drawings and materials delivered to the site, regularly review the Work to determine its compliance with the Construction Documents and this Contract For Construction, periodically confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality; and
 - (vi) prepare and maintain Project records, process documents, and staff the site field office.
- 3.1.2 The General Contractor shall promptly reject any Work (a) which does not conform to the Construction Documents; or (b) which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency having jurisdiction over the Project.
- 3.1.3 The General Contractor shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The General Contractor shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the General Contractor shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Owner; provided, however, that **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE OWNER BY REASON OF ANY DELAYS.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work shall relieve the General Contractor of his duty to perform or give rise to any right to damages or additional compensation from the Owner. The General Contractor expressly acknowledges and agrees that the Owner shall receive no damages for delay. The General Contractor's sole remedy shall be the right to seek an extension to the contract time. However, this provision shall not preclude recovery of damages by the General Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the Owner.

- 3.1.4 The Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.
- 3.2 **General Contractor's On-Site Facilities.** Commencing on the Date of Commencement and terminating on the Date Of Final Completion, the General Contractor shall provide a Site field office and toilet facilities at the Project Site.
- 3.2.1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, copiers and other similar office equipment. The General Contractor shall coordinate and secure the approval of the Owner prior to locating the field office on the premises, and shall secure the approval of the Owner for material storage sites or staging areas. Upon completion of the Work, the General Contractor shall remove the field office facilities and restore the property to its pre-construction condition.
- 3.2.2 The General Contractor shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.
- 3.2.3 The General Contractor shall provide temporary toilets at the Site for all workers for the duration of the construction period.
- 3.2.4 The General Contractor shall be responsible for providing a temporary account for water supply for the duration of this contract. Upon completion of the work, the General Contractor shall remove the temporary facilities.
- 3.2.5 The General Contractor shall provide electrical service for the duration of this contract, and shall provide temporary wiring and shall be responsible for removing such temporary facilities at the completion of the work. Additionally, the General Contractor shall provide area distribution boxes located in such a manner that the individual trades may furnish and use 100 ft. maximum length extension cords to obtain power and lighting at points where needed for work, inspection and safety. Temporary lines and service equipment shall be maintained in a safe condition at all times and extension lines removed and stored at the end of each working day.
- 3.2.6 The General Contractor shall make all necessary arrangements and pay the costs associated with the installation and operation of telephone service for the General Contractor's use.
- 3.3 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 4 EXTRA SERVICES

- 4.1 **Initiation Of Extra Services.** The General Contractor shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an "Additional Or Modified Required Service".
- 4.2 **Definition Of Extra Services.** Extra services include, but are not limited to:
- (i) services performed after the Date of Final Completion, except when required as Basic Services.
 - (ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the General Contractor, or its agents, employees, or consultants.
 - (iii) other services not included in Required Services mutually agreed to by the Owner and the General Contractor in writing.
- 4.3 Payment of the General Contractor for Extra Services shall be in accordance with applicable provisions of Chapter 1.

APPENDIX 1 ADDITIONAL OR MODIFIED REQUIRED SERVICES

GENERAL PROJECT SERVICES [¶ 1.5]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

PRE-CONSTRUCTION SERVICES [¶ 2.3]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

CONSTRUCTION SERVICES [¶ 3.3]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

CHAPTER 3 GENERAL TERMS AND CONDITIONS

ARTICLE 1 CONTRACT DOCUMENTS

- 1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the General Contractor for execution of the Work shall be made by the General Contractor at its cost and expense from the reproducible set(s) furnished by the Owner.
- 1.2 **Intentionally Omitted.**
- 1.3 **Electronic Media.** Unless otherwise specified in this Contract For Construction, the General Contractor may request that the Construction Documents required by the General Contractor for the Work be furnished to it on electronic media, if such is available to the Owner. To the extent that such documents are available on electronic media, the General Contractor will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the General Contractor for execution of the Work shall be made by the General Contractor at the General Contractor's cost and expense.
- 1.4 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 1.5 **Owner Disclaimer Of Warranty.** The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the General Contractor concerning such documents. The General Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
- 1.6 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract For Construction, the following shall control:
- 1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;
- 1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
- 1.6.3 As between plans and specifications, the requirements of the specifications shall

govern;

- 1.6.4 Provided, however, that among the plans and specifications provided by the Owner, the more stringent requirement, as determined by the Owner, shall take precedence over less stringent requirements regardless of which document the more stringent requirement resides.
- 1.7 **Shop Drawings And Submittals.** Shop drawings and other submittals from the General Contractor or its subcontractors and suppliers do not constitute a part of this Contract For Construction, but are Construction Documents after approval by the Owner or Professional.
- 1.8 **Contract Changes.** The General Contractor understands and agrees that this Contract For Construction cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract For Construction can be accomplished only by written documents signed by the parties. All Change Orders shall be executed in accordance with the Owner's Purchasing Policy and Procedures.

ARTICLE 2

GENERAL CONTRACTOR'S REVIEWS AND EVALUATIONS

- 2.1 **Sufficiency Of Construction Documents And Drawings.** The General Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.1.1 If the General Contractor performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the General Contractor shall be responsible for the consequences of such performance.
- 2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the General Contractor and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between

actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional failed to receive written notice before the Work was performed.

- 2.1.3 If the General Contractor believes that additional time or cost is involved because of clarifications or instructions issued by the Professional as a result of the General Contractor's discovery of a conflict in the Construction Documents, the General Contractor shall make claims as provided for in Section 25.8, Chapter 3. If the General Contractor fails to comply with subsection 2.1.1 or 2.1.2, the General Contractor shall pay such costs and damages to the Owner as would have been avoided if the General Contractor had complied. The General Contractor shall not be liable to the Owner or Professional for damages resulting from errors, inconsistencies or omissions in the Construction Documents or for differences between field measurements or conditions and the Construction Documents unless the General Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Professional.

2.2 Sufficiency Of Site. Prior to signing this Contract For Construction, the General Contractor has

- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
- (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and reviewed all other information provided by Owner and necessary for a full understanding of the Work. Owner will provide all hazmat and subsurface reports and test results, and all as-builts for existing facilities, utilities and infrastructure.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the General Contractor has also

- (iii) reviewed all available as-built and record drawings, plans and specifications; and
- (iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Contract For Construction.

Claims resulting from the General Contractor's failure to familiarize itself as required in this Paragraph with the Site or pertinent documents shall be deemed waived.

ARTICLE 3 GENERAL CONTRACTOR'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 3.1 **Performance Of Work.** The General Contractor shall perform and complete its obligations under this Contract For Construction using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Contract For Construction; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 3.1.1 The General Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering.
- 3.1.2. All services rendered by the General Contractor for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered, unless such services are specifically required by the Construction Documents for a portion of the Work or unless the General Contractor needs to provide such services in order to carry out the General Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The General Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the General Contractor by the Construction Documents, the Owner and Professional shall specify all performance and design criteria that such services must satisfy. The General Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on the drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such Professional's written approval when submitted to the Professional. The Owner and the Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and the Professional have specified to the General Contractor all performance and design criteria that such services must satisfy. The Professional shall review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. The General Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Construction Documents.
- 3.1.3 The General Contractor shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.

- 3.1.4 The General Contractor understands and acknowledges that the Work referred to in this Contract For Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The General Contractor shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.
- 3.1.5 The General Contractor shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the General Contractor damage, compromise or destroy any part of the Project or the Site, the General Contractor shall be fully and exclusively responsible for and bear all costs associated therewith. In the event General Contractor does not repair or replace any damaged portion of the Project or the Site, the Owner shall have the option to make such repairs or replacements and deduct the cost thereof from the balance of this Contract.
- 3.1.6 The General Contractor shall be responsible for the removal of all surplus material and debris occurring from the Work. Should the General Contractor fail to maintain a clean and safe site, including the buildings being renovated, the Owner shall retain the right to clean up and deduct the cost of such from the contract price.

3.2 **Compliance With Governmental Requirements.** The General Contractor shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; provided, however, that city water fees and any other permit or impact fee, government fee, or percolation testing for septic system shall be included in the contract amount as an allowance; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a prime concern of the General Contractor at all times. The General Contractor shall be responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the General Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the General Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the General Contractor shall give timely written notice to the Owner and the Professional and shall not proceed with that portion of the Work without further written instructions

from the Professional. If the General Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the General Contractor, the Owner shall be solely responsible for any resulting loss or damage.

- 3.4 **Concurrent Records.** The General Contractor shall, concurrently with performance, maintain detailed records of activities on the Site.
- 3.5 **As-Built Drawings.** The General Contractor shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the General Contractor shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction; provided, however, that the as-built drawings shall be kept electronically, and signed and sealed by the Professional, upon request of the Owner.
- 3.6 **Bribes And Kick-Backs.** The General Contractor shall not by any means:
- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
 - (ii) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;
 - (iii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
 - (iv) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the General Contractor has a direct or indirect proprietary or other pecuniary interest.
- 3.7 **Quality Control And Testing.** The General Contractor shall develop and implement a quality management program to insure quality construction, if required by the Owner. Unless otherwise specified in this Contract For Construction, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The General Contractor shall coordinate all tests and inspections required by the Construction Documents, and the General Contractor shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.

- 3.8 **Incident Reporting.** The General Contractor shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.
- 3.9 **Hazardous Substances.** The General Contractor shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the General Contractor encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the General Contractor shall (i) immediately stop performance of Work on that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.
- 3.10 **Owner's Use Of And Access To The Site.** The General Contractor shall perform the Work so as not to interrupt any operations of the Owner on the Site.
- 3.10.1 The General Contractor understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the General Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.
- 3.10.2 The General Contractor shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The General Contractor understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.
- 3.10.3 The General Contractor shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.
- 3.11 **Commissioning.** The General Contractor shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.
- 3.11.1 The General Contractor shall provide the Owner with operation and maintenance manuals and other operational documentation not less than thirty (30) calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

- 3.11.2 The General Contractor shall meet with the Owner's personnel not less than thirty (30) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

ARTICLE 4
GENERAL CONTRACTOR'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS
AND SITE FACILITIES

- 4.1 Project Staffing.** The General Contractor shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.
- 4.1.1 The General Contractor shall name a representative (the "General Contractor's Representative") to serve as its primary communication contact with the Owner and the Professional(s).
- 4.1.2 The General Contractor shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The General Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 4.1.3 The General Contractor shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.
- 4.1.4 The General Contractor shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 4.1.5 The General Contractor shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 4.2 Subcontractor / Supplier Contracts.** The General Contractor shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract For Construction. It is the intent of the Owner and the General Contractor that the obligations of the General Contractor's subcontractors and suppliers inure to the benefit of the Owner and the General Contractor, and that the Owner be a third-party beneficiary of the General Contractor's agreements with its subcontractors and suppliers.
- 4.2.1 The General Contractor shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the

pertinent portions of this Contract For Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

- 4.2.2 The General Contractor shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract For Construction that are included by reference in its written contract with the General Contractor, and that it will abide by those terms, conditions and requirements.
- 4.2.3 The General Contractor's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The General Contractor's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract For Construction, and upon request of the Owner, the General Contractor's subcontractors and suppliers will perform services for the Owner.
- 4.3 **Resolution Of Trade Disputes.** The General Contractor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.
- 4.4 **Alcoholic Beverages and Illegal Drugs.** No alcoholic beverages or illegal drugs are permitted on any of Owner's properties. Evidence of alcohol or drug use by an individual will result in the immediate removal of the person from the job site.

ARTICLE 5 GOODS, PRODUCTS AND MATERIALS

- 5.1 **Quality Of Materials.** The General Contractor shall furnish goods, products, materials, equipment and systems which:
- (i) comply with this Contract For Construction;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
 - (iii) are new (unless otherwise specified or permitted) and without apparent damage;
 - (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
 - (v) are merchantable;

- (vi) are free from defects; and
- (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 Installation And Use Of Materials. All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the General Contractor shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The General Contractor shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

5.3 Unsuitable Materials. The General Contractor shall inform the Owner of goods, products, materials, equipment or systems which the General Contractor knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the General Contractor, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the General Contractor furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the General Contractor shall provide such at no increased cost to the Owner.

5.4 Brand Name or Alternate. Notwithstanding the foregoing, if a product or service has been identified in the specifications by brand name, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of service that will be acceptable. Unless the General Contractor clearly indicated in its bid that it was proposing an alternate product or service, the bid shall be considered as offering the same brand name referenced in the specifications; provided, however, that if the General Contractor proposes to furnish an alternate product or service after this Contract For Construction has been fully executed, the General Contractor shall receive the written authorization from the Professional and Owner prior to incorporating such alternate product or service into the Work. An alternate to the brand name product/material specified will only be considered if the product/material is not readily available to meet the construction schedule. Should the professional/owner accept an alternate brand name product/material any additional costs shall be borne by the Contractor. Also such alternate will require cost comparison evidence and if found to be less expensive than the brand specified, the owner will be entitled to credit for the cost

difference including the apportioned General Conditions and Management Fee. For purposes of this paragraph, an alternate shall be defined as a product or material differing substantially in quality and characteristics from the product or material set forth in the Contract Documents. If the Contract Documents specify an "or equal" product or material, an equal is defined as a product or material with the same quality or characteristics as that specified, but differing in brand name.

- 5.5 **Defective Materials.** If during or prior to construction operations the Owner or Professional rejects any portion of the Work on the grounds that the Work or materials are defective, the Owner or Professional shall give the General Contractor written notice of the defect. The General Contractor shall then have seven (7) calendar days from the date the notice is received to correct the defective condition.
- 5.6 **Security For The Project.** The General Contractor shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work, whether stored on or off site by the General Contractor, its subcontractors, materialmen or others under its supervision. The General Contractor shall provide a construction fence for the protection of the public and the job site, and shall coordinate and secure the approval of the Owner prior to installation of the fence and commencement of the Project.
- 5.7 **Material Safety Data Sheets.** If any chemicals or materials or products containing toxic substances are to be used at any time during this contract, the General Contractor shall keep copies of all material safety data sheets on file with the contract documents located in the field office.
- 5.8 **Payment for Materials.** Unless otherwise provided in this Contract for Construction, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the General Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

ARTICLE 6 DOCUMENTS AND INFORMATION

- 6.1 **Information From Owner.** The Owner shall provide the General Contractor with information reasonably necessary to assist the General Contractor in performing its services including, if applicable:
- (i) the Site legal description and any required survey;
 - (ii) all written and tangible material in its possession concerning conditions below

ground at the Site;

- (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
- (iv) the Owner's pertinent Project dates and key milestone dates.

6.2 **Resolution Of Questions.** The General Contractor shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.

6.3 **Processing Of Documents.** When requested to do so by the Owner, the General Contractor shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by General Contractor; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.

6.4 **Sufficiency Of Owner Information.** The furnishing of information by the Owner to the General Contractor shall not relieve the General Contractor of responsibilities contained elsewhere in this Contract For Construction to evaluate information and documents provided by the Owner and the General Contractor shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the General Contractor to perform the Work.

ARTICLE 7 SUBMITTALS

7.1 **Submittal Schedule.** The General Contractor shall timely prepare and transmit to the designated Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The General Contractor shall review and approve all submittals prior to submission to a Professional.

7.2 **Processing Of Submittals.** The General Contractor shall in timely fashion review, approve if appropriate and forward submittals to the Professional(s) for review and approval along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

7.2.1 A Professional is responsible to the Owner, but not to the General Contractor, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply

with the Contract For Construction.

- 7.2.2 The General Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Professional. The Work shall then be performed in accordance with the approved submittals except that the General Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Professional's approval of shop drawings, product data, samples or similar submittals unless the General Contractor has specifically informed the Professional in writing of such deviation at the time of submittal and (i) the Professional has given written approval to the specific deviation as a minor change in the Work; or (ii) a change order or construction change directive has been issued authorizing the deviation. The General Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Professional's approval thereof.
- 7.2.3 The Professional will review and approve, or take other appropriate action, upon the General Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Professional's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, General Contractor or separate contractors, while allowing sufficient time in the Professional's judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the General Contractor as required by the Contract Documents. The Professional's review of the General Contractor's submittals shall not relieve the General Contractor of its obligations hereunder, and the Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Professional, of any construction means, methods, techniques, sequences or procedures. The Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 7.2.4 By approving and submitting shop drawings, product data, samples and similar submittals, the General Contractor represents that the General Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

ARTICLE 8

GENERAL CONTRACTOR'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 8.1 **Rejection And Correction Of Work In Progress.** During the course of the Project, the

General Contractor shall inspect and promptly, whether at the direction of the Professional, Owner, or the General Contractor itself, reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

8.1.1 The General Contractor shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The General Contractor shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

8.1.2 The General Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the General Contractor's correction or removal of rejected Work. If the General Contractor fails to correct any destroyed or damaged work, the Owner may take such steps as are necessary to repair or replace the destroyed or damaged work and deduct the cost thereof from this contract.

8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the General Contractor shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the General Contractor shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the General Contractor shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

8.3 **Acceptance of Non-conforming Work.** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Construction Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 9 CHANGE ORDERS AND CHANGES TO THE WORK

9.1 **Change Order Requests.** Any party to the construction process may request changes

to the Work, compensation or applicable schedules after execution of this Contract, and without invalidating this Contract. The Professional shall prepare the change orders and construction change directives.

- 9.1.1 With respect to such requests for changes by the General Contractor, the General Contractor shall prepare and submit change order requests to the designated Professional and Owner.
 - 9.1.2 With respect to requests for changes by parties other than the General Contractor, the General Contractor shall promptly review and respond to change order requests submitted by a Professional.
 - 9.1.3 When requested to do so, the General Contractor shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.
 - 9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.
- 9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the General Contractor to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Contract For Construction, and the General Contractor, upon written direction from the Owner, shall proceed with such change.
- 9.3 **Professional-Directed Changes.** A Professional, without the Owner's prior approval, may authorize or direct the General Contractor to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the General Contractor shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the General Contractor.
- 9.4 **Administration Of Changes.** The Professional and Owner will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 9.5 **Compensation For Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the General Contractor, the General Contractor shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated Professional.
- 9.5.1 If price quotations for change order requests are determined by the Professional

to be unreasonable, the General Contractor shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

9.5.2 The General Contractor and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract For Construction, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

9.5.3 It is the responsibility of the General Contractor to review and approve all pricing of additional work required of its subcontractors and suppliers.

9.6 **Performance Of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

9.7 **Disputes Regarding Changes.**

9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner issues a Construction Change Directive. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.

9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.

9.7.3 A Construction Change Directive is a written order prepared by the Professional and signed by the Owner and the Professional, directing a change in the Work prior to agreement on any change in the contract price, time or both. The issuance of a Construction Change Directive does not invalid the Contract for Construction. A Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. If the Directive provides for a change in the contract price, the adjustment shall be based on one of the following:

(i) mutual acceptance of a lump sum properly itemized and supported by

sufficient substantiating data to permit evaluation;

- (ii) unit prices stated in the Contract Documents or subsequently agreed upon;
- (iii) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (iv) as set forth below.

9.7.4 The General Contractor shall promptly proceed with the Work upon receipt of a Construction Change Directive, and shall immediately advise the Professional of any disagreement with the method of compensation set forth in the Directive.

9.7.5 The General Contractor shall sign the Construction Change Directive if the General Contractor agrees with the adjustment in the time or contract price. Upon signature, the Change Order Directive shall be effective as a Change Order.

9.7.6 If the General Contractor does not respond promptly or disagrees with the method of adjustment, the method of adjustment shall be determined by the Professional on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, include a reasonable allowance for overhead and profit. In such case, the General Contractor shall keep and present to the Professional an itemized accounting together with appropriate supporting data. Unless otherwise specified herein, costs shall be limited to:

- (i) costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance directly attributable to the change;
- (ii) costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed directly attributable to the change;
- (iii) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the General Contractor or others directly attributable to the change;
- (iv) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work directly attributable to the change; and
- (v) additional costs of supervision and field office personnel directly attributable to the change.

9.7.7 The amount of credit to be allowed by the General Contractor to the Owner for a deletion or change which results in a net decrease in the contract price shall be the actual net cost as confirmed by the Professional. When there are both increases and decreases in the Work, the allowance for overhead and profit shall

be figured on the basis of net increase, if any, of the change.

9.7.8 Pending final determination of the total cost of the Change Directive, amounts not in dispute shall be included in future invoices for payment, accompanied by the Change Order. For costs in dispute, the Professional shall make an interim determination for purposes of monthly certification for payment for those costs. Either party may then submit a claim according to other provisions contained herein.

9.8 **Necessity For Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The General Contractor understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 10 FINANCIAL CLAIMS AND LIENS

10.1 **Notification Regarding Liens.** The General Contractor shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, General Contractor's trust fund claims, or claims of any type made by anyone against the Owner, the Professional(s), the General Contractor or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

10.2 **Discharge Of Liens.** The General Contractor shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed is not discharged and released by the claimant, the General Contractor shall, within a reasonable period of time, but in no event more than fourteen (14) calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond.

ARTICLE 11 OWNER'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

11.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's design representative from the effective date of this Contract For Construction until one (1) year from the date of achievement of Substantial Completion.

11.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.

- 11.1.2 The designated Professional will act as initial interpreter of the requirements of this Contract For Construction and as the Owner's advisor on claims.
- 11.2 **Professional Site Visits.** The Professional(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract For Construction, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.3 **Professional Rejection Of Work.** The Professional(s) may disapprove or reject Work which does not comply with (i) this Contract For Construction including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.4 **Professional Evaluations.**
- 11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract For Construction and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.
- 11.4.2 The Professional(s) may require inspection or testing of any Work in addition to that required by this Contract For Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).
- 11.5 **Professional Submittal Activities.** The Professional(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract For Construction; and (iii) the Owner's budgeted Total Project Construction Cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The General Contractor remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.6 **Professional Interpretations.** A Professional will, when requested to do so in writing

by the General Contractor, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract For Construction.

- 11.7 **Professional Change Order Activities.** The Professional(s) will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.
- 11.8 **Professional Pay Application Activities.** The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the General Contractor and shall authorize payment by the Owner to the General Contractor in writing. After the Work is determined to be finally complete and the Professional determines that the General Contractor has completed the Work, the Professional will determine whether the General Contractor is entitled to final payment, and if so will so certify to the Owner in writing.
- 11.9 **Professional Relationship To General Contractor.** The duties, obligations and responsibilities of the General Contractor under this Contract For Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The General Contractor shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the General Contractor to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

ARTICLE 12 INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.
- 12.1.1 When the General Contractor believes that the Work is substantially complete, it shall notify the Owner and the appropriate Professional that its Work is ready for a Substantial Completion inspection.
- 12.1.2 At or prior to the Substantial Completion inspection, the General Contractor will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:
- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the General Contractor responsibility for security, utilities, damage to the Work and insurance;

- (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
 - (iii) contain signature lines for the Owner, the General Contractor and the Professional.
- 12.1.3 Upon receipt of notification from the General Contractor the appropriate Professional will coordinate with the Owner and the General Contractor a date for inspection of the Work to determine whether the Work is substantially complete.
- 12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional will:
 - (i) inspect the Work;
 - (ii) list additional items to be completed or corrected; and
 - (iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.
- 12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.
- 12.1.6 On or prior to the required date of Substantial Completion, the General Contractor shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the General Contractor of any deficiencies.
- 12.1.7 When the Owner, the General Contractor and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the General Contractor has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction. Failure of the General Contractor to include an item on the list does not alter the responsibility of the General Contractor to complete all Work in accordance with this Contract for Construction.
- 12.1.8 The General Contractor shall promptly correct the Work properly rejected by the Professional or failing to conform to the requirements of this Contract for Construction, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting the rejected Work, including additional testing and inspections and compensation for

the Professional's services and expenses made necessary thereby, shall be at the General Contractor's expense.

12.2 Final Completion. Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the General Contractor has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the General Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the General Contractor.

12.2.1 When the General Contractor believes the Work is finally complete, the General Contractor shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the General Contractor, the Professional will coordinate with the Owner and the General Contractor a date for inspection of the Work to determine whether the Work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Professional will:

- (i) inspect the Work;
- (ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
- (iii) determine whether the Work complies with (a) this Contract For Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- (v) determine, in consultation with the Owner, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the General Contractor shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

12.2.5 On or prior to the date of Final Completion, the General Contractor shall deliver to the appropriate Professional the following Final Completion close-out documentation and items:

- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
- (ii) two (2) sets of as-built drawings and markups;
- (iii) certification and affidavit that all insurance required of the General Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- (iv) written consent of the surety(ies), if any, to final payment;
- (v) full, final and unconditional waivers of mechanics or construction liens, releases of General Contractor's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- (vi) full, final and unconditional certification and affidavit that all of the General Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the General Contractor, and will immediately inform the General Contractor about any deficiencies and omissions.

ARTICLE 13 GENERAL CONTRACTOR'S WARRANTIES AND GUARANTEES

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract For Construction, the General Contractor, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one (1) year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

13.1.1 The General Contractor shall schedule, coordinate and participate in a walk-

through inspection of the Work one (1) month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the General Contractor fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the General Contractor shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the General Contractor's failure to correct the failure or defect.

13.2 **Express Warranties And Guarantees – General Contractor.** In addition to the warranties and guarantees set forth elsewhere herein, the General Contractor expressly warrants and guarantees to the Owner:

- (i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
- (iii) that all management, supervision, labor and services required for the Work shall comply with this Contract For Construction and shall be and are performed in a workmanlike manner.
- (iv) All work shall be guaranteed for one (1) year after completion and acceptance unless otherwise specified. The guarantees are to be construed as being supplemental in nature and in addition to any and all other remedies available to the Owner under the laws of the State of Florida.

13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The General Contractor shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the General Contractor in a form identical to the warranties, guarantees and other undertakings set forth in this Contract For Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the General Contractor.

13.4 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and

review of the Construction Documents.

- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the General Contractor's obligations under this Contract For Construction. Paragraph 13.1 relates only to the General Contractor's specific obligations with respect to the Work, and has no relationship to the time within which the General Contractor's contractual obligations under this Contract For Construction may be enforced, nor to the time within which proceedings may be commenced to establish the General Contractor's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.
- 13.6 **Commencement Of Obligations.** Unless otherwise specified, all of the General Contractor's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

ARTICLE 14 OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 14.1 **Timely Compensation Of General Contractor.** The Owner shall timely compensate the General Contractor in accordance with this Contract For Construction, and in accordance with Part VII, Chapter 218, Florida Statutes (2004).
- 14.2 **Payment For Testing.** Unless otherwise required to be provided by the General Contractor in its scope of services, Owner shall secure and pay for all Project testing.
- 14.3 **Owner Review Of Documents.** The Owner shall review documents prepared by the General Contractor in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the General Contractor of any of its responsibilities.
- 14.4 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the General Contractor, for any of the foregoing purposes, be deemed the agent of the Owner.
- 14.5 **Owner's Utilities.** The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The General Contractor shall be responsible to provide and pay for connections to, extensions from and means of using these utilities, unless otherwise specified herein.
- 14.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for General Contractor's field offices.

- 14.5.2 Acceptance by the General Contractor of the use of the Owner's water, gas and electrical energy constitutes a release from the General Contractor to the Owner of all claims and liability for any damages or losses which may be incurred by the General Contractor as a result of water, gas and electrical energy outages or voltage variations or surges.

ARTICLE 15

GENERAL CONTRACTOR'S COMPENSATION

- 15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the General Contractor's Compensation Schedule is an estimate only, and the compensation to the General Contractor shall be determined by the actual number of units incorporated in, or required by, the Work. If unit prices are set forth in the Contract for Construction or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed change order or construction change directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or General Contractor, the applicable unit prices may be equitably adjusted.
- 15.2 **Schedule Of Values.** The General Contractor shall prepare and present to the Owner and the designated Professional the General Contractor's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The General Contractor's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The General Contractor shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the General Contractor's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.
- 15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the General Contractor shall invoice the Owner and the Owner shall pay the General Contractor the Construction Price.
- 15.3.1 Unless otherwise specified herein, at least every thirty (30) calendar days after commencement of performance, but no more frequently than once a month, the General Contractor shall submit invoices to the Professional requesting payment for labor and services rendered during the preceding thirty (30) calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional requests and shall at a minimum state:
- (i) the total Construction Price;
 - (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project;
 - (iii) a breakdown of the various phases or parts of the Work as related to the

Construction Price;

- (iv) the value of the various phases or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage;

and shall also have attached such lien waiver and other documentation verifying the General Contractor's payment to subcontractors and suppliers as the Owner or a Professional may request. There shall be no payment made for materials, supplies or equipment stored on the job site but not yet incorporated into the Project.

15.4 Payment Procedures.

15.4.1 The Professional will review the General Contractor's applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the General Contractor and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the General Contractor in writing. Such authorization will constitute the Professional's certification to the Owner that

- (i) the Work described in the General Contractor's invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;
- (ii) all necessary and appropriate lien waivers have been submitted; and
- (iii) the amount requested is currently due and owing to the General Contractor.

15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.4.3 Payments shall be deemed timely if postmarked at least two (2) business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article 15.

15.4.4 The Professional may withhold all or part of an application for payment to the extent reasonably necessary to protect the Owner if in the Professional's opinion the representations to the owner required by subsection 15.4.1 cannot be made. If the Professional is unable to certify payment in the amount of the application, the Professional shall notify the General Contractor and the Owner as provided for herein. If the General Contractor and the Professional cannot agree on a revised amount, the Professional shall promptly authorize payment for the amount which the Professional is able to make such representations to the Owner. The Professional may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or part of an application for payment previously issued, to such extent as may be necessary in the

Professional's opinion to protect the Owner from loss for which the General Contractor is responsible, including loss resulting from its acts and omissions, because of

- (i) defective Work not remedied;
- (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the General Contractor;
- (iii) failure of the General Contractor to make payments properly to subcontractors for labor, materials or equipment;
- (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (v) damage to the Owner or other contractor;
- (vi) reasonable evidence that the Work will not be completed within dates established in the Construction Schedule, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay; or
- (vii) persistent failure to carry out the Work in accordance with this Contract for Construction.

15.5 Owner's Right To Refuse Payment. A Professional's approval of the General Contractor's invoice shall not preclude the Owner from exercising any of its remedies under this Contract For Construction. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the General Contractor due to:

- (i) the General Contractor's failure to perform the Work in compliance with the requirements of this Contract For Construction or any other agreement between the parties;
- (ii) the General Contractor's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the General Contractor's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) the General Contractor's failure to use funds previously paid the General Contractor by the Owner, to pay the General Contractor's Project-related obligations including, but not limited to, the General Contractor's subcontractors,

materialmen, and suppliers;

- (v) claims made, or likely to be made, against the Owner or its property;
- (vi) loss caused by the General Contractor or the General Contractor's subcontractors, or suppliers; or
- (vii) the General Contractor's failure or refusal to perform any of its obligations to the Owner.

15.7 Correction Of Past Payments. All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the General Contractor in writing of such defect or impropriety in accordance with Section 218.735, Florida Statutes. Any disputed amounts determined by the Owner to be payable to the General Contractor shall be due in the time frames set forth in Section 218.735, Florida Statutes, from the date the dispute is resolved.

15.8 Invoice Warranties And Guarantees. The General Contractor expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner upon incorporation into the Work,;
- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the General Contractor, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the General Contractor, or its subcontractors or suppliers.

15.9 Omitted.

15.10 General Contractor's Signature. The signature of the General Contractor on any invoice constitutes the General Contractor's certification to the Owner that (i) the General Contractor's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract For Construction; (ii) the General Contractor has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

15.11 Taxes.

15.11.1 The Owner is exempt from federal excise taxes and all State of Florida sales and use taxes. The General Contractor shall not include any tax on any item or service proposed. The Owner will execute an exemption certificate if submitted by the General Contractor. Further, contractors doing business with the Owner

are not exempt from paying sales tax to their suppliers for materials needed to fulfill contractual obligations with the Owner, nor shall the General Contractor be authorized to use the Owner's tax exempt certificate or status in securing such materials. The General Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes.

15.11.2 In accordance with section 212.08(6), Florida Statutes, and Rule 12A-1.094, Florida Administrative Code, the Owner is tax exempt when it purchases tangible personal property for use in public works projects, subject to certain restrictions. In the event this project is declared a sales tax recovery project by the Owner, the following procedure shall apply:

- (i) The Owner shall make a recommendation to the Division of Procurement Services regarding the materials to be purchased.
- (ii) When building materials are purchased, all purchase orders shall be issued directly from Procurement Services.
- (iii) The Owner shall take title to those materials directly from the vendors and shall bear the risk of loss or damage to the materials which are delivered by the vendors.
- (iv) The Owner shall be invoiced directly for the building materials from the vendors and shall pay the invoices for the materials directly, presenting its sales tax exemption certificate to each vendor at the time of payment.

The cost of any materials purchased through the sales tax recovery program shall be deducted from the contract amount and the General Contractor shall no longer be responsible for obtaining such materials. A written change order approved in accordance with the Owner's policy shall be issued and shall become a part of the Contract Documents.

15.12 **Compensation Of General Contractor's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the General Contractor shall pay each of its subcontractors and suppliers out of the amount received by the General Contractor on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the General Contractor on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the General Contractor's subcontractors or suppliers.

15.13 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the General Contractor must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the General Contractor in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 16 SCHEDULE REQUIREMENTS

- 16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.
- 16.1.1 Unless otherwise directed and approved by the Owner, the General Contractor shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.
- 16.1.2 The Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.
- 16.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the General Contractor's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.
- 16.1.4 The General Contractor shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The General Contractor shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.
- 16.1.5 The General Contractor shall periodically and in all instances when the General Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other

milestone dates required by the Owner, if any.

- 16.2 **Delay In Performance.** If at any time the General Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, the General Contractor shall (i) immediately notify the designated Professional of the probable cause of and effect from the delay, including but not limited to any costs associated with the delay, and possible alternatives to minimize the delay; and (ii) if the cause of the delay is due to the fault of General Contractor, then take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any. Time extensions, if granted, shall be limited to the CPM scheduled activities that are adversely affected as determined by the Owner and Professional.
- 16.3 **Modifications To Time For Performance.** The General Contractor shall determine and promptly notify the Owner and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional(s).
- 16.4 **Early Completion.** The General Contractor may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the General Contractor's sole convenience and shall not create any additional General Contractor rights or Owner obligations under this Contract For Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the General Contractor any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the General Contractor any compensation should the Owner cause the General Contractor not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.
- 16.5 **Modification Dates Of Substantial Completion Or Final Completion.** The General Contractor may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the General Contractor's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Contract For Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the General Contractor's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.
- 16.6 **Document Review.** The General Contractor shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional(s) reasonable time for review.

ARTICLE 17

LIQUIDATED DAMAGES

- 17.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract For Construction and that the Owner will incur damages if the Work is not completed on time. The General Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.
- 17.2 **Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the General Contractor in the completion of the Work. If the General Contractor inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract For Construction, the General Contractor shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that the General Contractor is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing General Contractor.
- 17.3 **Compensable Delay.** If the General Contractor is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines may justify the compensation of the General Contractor for the delay, the General Contractor's compensation shall be equitably adjusted to cover the General Contractor's actual and direct increased costs attributable to such delay.
- 17.5 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the General Contractor will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the General Contractor the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.
- 17.5.1 If and when the General Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the General Contractor those funds withheld, but no longer applicable, as liquidated damages.
- 17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the General Contractor or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

- 18.1 Notification Regarding Unusual Conditions.** If (i) the General Contractor encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the General Contractor, the General Contractor shall promptly, but in no event later than two (2) business days after first observance of the conditions, notify the appropriate Professional(s) and the Owner before conditions are disturbed and give the Professional(s) or the Owner opportunity to observe the condition in its undisturbed state.
- 18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the General Contractor's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.
- 18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen (14) calendar days from the date of observation of the changed conditions.
- 18.1.3 *The General Contractor's failure to notify the Professional(s) and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.***

ARTICLE 19 GENERAL CONTRACTOR'S RECORDS

- 19.1 Preparation Of Records.** The General Contractor shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.
- 19.2 Retention Of Records.** The General Contractor shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.

- 19.2.1 The General Contractor shall maintain substantiating records for five (5) years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the General Contractor receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the General Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.
- 19.2.2 The General Contractor shall, upon seven (7) days' request from the Owner, secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.
- 19.3 **Access To Records.** Upon the request of the Owner, the General Contractor shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the General Contractor's records at the copying party's reasonable expense, within adequate work space at the General Contractor's facilities. Failure by the General Contractor to supply substantiating records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract For Construction.

ARTICLE 20 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

- 20.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the General Contractor (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the General Contractor to the extent permitted by the Florida Public Records law; and (v) shall not be used by the General Contractor on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the General Contractor a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 20.2 **Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the General Contractor for the Project are the sole property of the

Owner free of any retention rights of the General Contractor. The General Contractor hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the General Contractor for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

- 20.3 **Disclosure Of Information.** The General Contractor shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Construction.
- 20.4 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the General Contractor shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential to the extent permitted by the Florida Public Records law.
- 20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21

GENERAL INSURANCE REQUIREMENTS

- 21.1 **General Insurance Requirements.** Unless otherwise required, each insurance policy:
- (i) shall be issued by an insurance carrier acceptable to the Owner;
 - (ii) shall be kept in force throughout performance of the General Contractor's services and for one year after the end of such performance;
 - (iii) shall be an occurrence policy; and
 - (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without thirty (30) calendar days' prior written notice to the Owner.
- 21.2 **Certificates Of Insurance.** Prior to performance of services on the Project, the General Contractor shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The General Contractor shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the General Contractor's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the General Contractor or its subcontractors and suppliers. Upon the request of the Owner, the General Contractor

shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.

- 21.3 **Effect Of Insurance.** Compliance with insurance requirements shall not relieve the General Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract For Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the General Contractor fails to comply with the contractual provisions of this Contract For Construction. Indemnity obligations specified elsewhere in this Contract For Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.
- 21.4 **Waiver Of Subrogation.** The General Contractor hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the General Contractor, and to anyone claiming by, through or under the General Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

ARTICLE 22

GENERAL BOND REQUIREMENTS

- 22.1 **General Bond Requirements.** If the General Contractor is required to provide performance and payment bond(s), the penal sum of each bond shall be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:
- (i) be in a form approved by the Owner;
 - (ii) incorporate by reference the terms of this Contract For Construction;
 - (iii) be executed by a company certified by the Secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13);
 - (iv) be executed by a company licensed and authorized to do business in the state in which the Project is located; and
 - (v) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.
- 22.2 **Delivery Of Bonds.** The General Contractor shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.

ARTICLE 23

OWNER'S RIGHT TO STOP WORK OR RIGHT TO CARRY OUT WORK

- 23.1 **Cease And Desist Order.** If the General Contractor fails or refuses to perform or fails to

correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract For Construction, the Owner may, by written notice, order the General Contractor to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the General Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

23.1.1 The General Contractor shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the General Contractor.

23.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the General Contractor or others.

23.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the General Contractor fails and refuses within seven (7) calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another General Contractor, and the General Contractor shall be responsible for the cost of performing such Work by the Owner.

23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the General Contractor.

23.2 **Right to Carry Out Work.** If the General Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to commence and continue correction of such default or neglect within seven (7) calendar days after receipt of the written notice from the Owner to do so with diligence and promptness, the Owner may after such seven-day period give the General Contractor a second written notice to correct such deficiencies. The second written notice shall require the General Contractor to correct such default or neglect within three (3) calendar days of receipt of the written notice. If the General Contractor fails to correct such deficiencies the Owner may, without prejudice to other remedies available to the Owner, correct the deficiencies and issue a Change Order deducting from the Contract Price the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Professional's additional services made necessary by the default, neglect or failure. Such action by the Owner and amounts charged to the General Contractor are both subject to prior approval of the Professional. If payment then or thereafter due the General Contractor are not sufficient to cover such amounts, the General Contractor shall pay the difference to the Owner.

ARTICLE 24

TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION

24.1 Termination For Cause By Owner.

24.1.1 The Owner may terminate this Contract For Construction for cause if the General Contractor materially breaches this Contract For Construction by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein, or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and General Contractor.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the General Contractor setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. At any time thereafter, if the General Contractor fails to initiate the cure or if the General Contractor fails to expeditiously continue such cure until complete, the Owner may give written notice to the General Contractor of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and

machinery on the Site owned or leased by the General Contractor;

- (v) directly pay the General Contractor's subcontractors and suppliers compensation due to them from the General Contractor;
- (vi) finish the Work by whatever method the Owner may deem expedient; and
- (vii) require the General Contractor to assign the General Contractor's right, title and interest in any or all of General Contractor's subcontracts or orders to the Owner.

24.1.3 If the Owner terminates the Contract For Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the General Contractor, the General Contractor's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the General Contractor the Owner's damages resulting from the termination.

24.1.4 If the Owner terminates this Contract For Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

24.2 **Termination Due To Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance under this contract, the contract shall be cancelled and the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the goods or services delivered under the contract.

24.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the General Contractor terminating this Contract For Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the General Contractor shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

24.4 **General Contractor's Compensation When Owner Terminates For Convenience.** If this Contract For Construction is (i) terminated by the Owner pursuant to Paragraph 24.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 24.3, the Owner shall pay the General Contractor specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the General Contractor. Absent agreement on the additional amount due the General Contractor, the Owner shall pay the General Contractor:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the General Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it

appears that the General Contractor would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

- (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

24.5 General Contractor's Compensation When Owner Terminates For Cause. If this Contract For Construction is terminated by the Owner for cause pursuant to Paragraph 24.1, no further payment shall be made to the General Contractor until Final Completion of the Project. At such time, the General Contractor shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the General Contractor, including liquidated damages applicable thereto. The General Contractor shall additionally reimburse the Owner for any additional costs or expenses incurred.

24.6 Limitation On Termination Compensation. Irrespective of the reason for termination or the party terminating, the total sum paid to the General Contractor shall not exceed the Contract Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract For Construction, and shall in no event include duplication of payment.

24.7 General Contractor's Responsibility Upon Termination. Irrespective of the reason for termination or the party terminating, if this Contract For Construction is terminated, the General Contractor shall, unless notified otherwise by the Owner,

- (i) immediately stop work;
- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the General Contractor has.

24.8 Lack Of Duty To Terminate. The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the General Contractor to exercise that right for the benefit of the Owner, the General Contractor or any other persons or entities.

24.9 Limitation On Termination Claim. If the General Contractor fails to file a claim within one (1) year from the effective date of termination, the Owner shall pay the General Contractor only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 25 APPLICABLE LAW AND DISPUTE RESOLUTION

- 25.1 **Applicable State Law.** This Contract For Construction shall be deemed to be entered into in and shall be interpreted under the laws of the State of Florida.
- 25.2 **Court Actions.** Except as expressly prohibited by law:
- (i) all legal actions hereunder shall be conducted only in the Circuit Court sitting in Lake County, Florida and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
 - (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
 - (iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and
 - (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 25.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 25.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.
- 25.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.
- 25.4.2 The parties shall not be required to mediate for a period greater than ninety (90) calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.
- 25.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

- 25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.
- 25.4.5 The Owner, the Professional(s), the General Contractor, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Construction or an agreement that incorporates this Contract For Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.
- 25.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.
- 25.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Construction, no party to this Contract For Construction shall be required to participate in or be bound by, any arbitration proceedings.
- 25.7 **Performance During Dispute Resolution.** The Owner and the General Contractor agree that pending the resolution of any dispute, controversy, or question, the Owner and the General Contractor shall each continue to perform their respective obligations without interruption or delay, and the General Contractor shall not stop or delay the performance of the Work.
- 25.8 Claims and Disputes.
- 25.8.1 For purposes of this Contract For Construction, a claim is a demand by one of the parties seeking an adjustment or interpretation of the Contract Documents, Contract Price, Contract Time, or seeking resolution to other disputes or matters in question between the Owner and the General Contractor. Claims must be initiated by written notice to the Professional and other party within twenty-one (21) calendar days after reasonably recognizing that the event giving rise to the claim has or will have a cost or schedule impact, unless another provision of this Contract For Construction sets a different time. Pending final resolution of a claim, except as otherwise agreed to in writing executed by the parties, the General Contractor shall proceed diligently with performance of the Contract For Construction and the Owner shall continue to make payments in accordance with the Contract Documents. A claim shall be filed in accordance with this paragraph if the General Contractor believes that additional cost is involved for reasons including but not limited to (i) a written interpretation from the Professional; (ii) an order by the Owner to stop the Work where the General Contractor was not at fault; (iii) a written order for a minor change in the Work issued by the

Professional; (iv) failure of payment by the Owner; (v) termination of this Contract For Construction by the Owner; (vi) Owner's suspension; or (vii) other reasonable grounds.

- 25.8.2 Claims shall be referred initially to the Professional for decision. An initial decision by the Professional shall be required as a condition precedent to mediation, arbitration or litigation of all claims between the General Contractor and the Owner, unless thirty (30) calendar days have passed after the claim has been referred to the Professional with no decision having been rendered by the Professional. The Professional shall not decide disputes between the General Contractor and persons or entities other than the Owner.
- 25.8.3 The Professional shall review claims within ten (10) calendar days of receipt and shall either (i) request additional supporting data from the claimant or a response with supporting data from the other party, to be submitted to the Professional within ten (10) calendar days of receipt of the request; (ii) reject the claim in whole or in part; (iii) approve the claim; (iv) suggest a compromise; or (v) advise the parties that the Professional is unable to resolve the claim. The Professional shall have the option to seek information from or consult with either party or other persons with special knowledge who may assist the Professional in rendering a decision. The Professional may also retain other persons as necessary with prior written approval of the Owner and at the Owner's expense.
- 25.8.4 The Professional shall approve or reject claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Price, Time or both. When a written decision of the Professional is rendered, the parties shall have thirty (30) calendar days to submit to mediation pursuant to the provisions of Chapter 3, Article 25. Failure to request mediation within this time frame shall result in the Professional's decision becoming final and binding upon the Owner and the General Contractor.
- 25.8.5 Upon receiving a claim against the General Contractor, the Professional or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the claim. If the claim relates to the possibility of the General Contractor's default, the Professional or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 26

DAMAGES AND REMEDIES

- 26.1 **General Contractor's Repair.** The General Contractor shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract For Construction, or any other applicable warranty or guarantee.
- 26.2 **General Contractor's Reimbursement.** The General Contractor shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the General Contractor's failure to substantially perform in accordance with the terms of this Contract For Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the General Contractor or of which the General Contractor

was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract For Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the General Contractor.

- 26.3 **General Indemnity.** To the fullest extent permitted by law the General Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the General Contractor's services, including without limitation any breach of contract or negligent act or omission (i) of the General Contractor; or (ii) of the General Contractor's subcontractors or suppliers, or (iii) of the agents, employees or servants of the General Contractor or its subcontractors or suppliers.

26.3.1 To the fullest extent permitted by law, the General Contractor, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in the paragraph above.

- 26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the General Contractor shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing. If the General Contractor has reason to believe the use of a required design, process or product is an infringement of a patent, the General Contractor shall be responsible for such loss unless such information is promptly given to the Owner.

- 26.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract For Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract For Construction or by law.

- 26.6 **Waiver Of Damages.** The General Contractor shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

- 26.7 **Interest.** The Owner is entitled to interest on all amounts due from the General Contractor that remain unpaid thirty days after the amount is deemed due, whether as a

result of a resolution of a dispute or otherwise. Any such interest shall be in the maximum amount permitted by Florida law.

ARTICLE 27

MISCELLANEOUS PROVISIONS

- 27.1 **Integration.** This Contract For Construction represents the entire and integrated agreement between the Owner and the General Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract For Construction may be amended only by written instruments signed by both the Owner and the General Contractor, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.
- 27.2 **Severability.** If any provision of this Contract For Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 27.3 **Waiver.** No provision of this Contract For Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Construction. Furthermore, no action or failure to act by the Owner, Professional, or General Contractor shall constitute a waiver of a right or duty afforded them under this Contract For Construction, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing.
- 27.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the General Contractor with any provision of this Contract For Construction shall operate to release, discharge, modify, change or affect any of the General Contractor's obligations.
- 27.5 **Third-Party Beneficiaries.** This Contract For Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract For Construction, nothing contained in this Contract For Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the General Contractor.
- 27.6 **Survival.** All provisions of this Contract For Construction which contain continuing obligations shall survive its expiration or termination.
- 27.7 **Assignment.** Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Contract For Construction without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner, or except as otherwise specifically provided for in this Contract For Construction in case of default. The Owner and the General Contractor bind their successors and assigns to the other party to this Contract For Construction.

- 27.8 **Truth in Negotiation Certificate.** For all lump-sum or cost-plus fixed fee agreements exceeding \$150,000, the firm awarded the agreement must execute a truth in negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete and current, at the time of contracting. Any agreement requiring this certificate shall contain a provision that the original agreement price and any additions shall be adjusted to exclude any significant sums by which the Owner determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the contract. Execution of this Agreement constitutes execution of the Truth in Negotiation Certificate.
- 27.9 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- 27.10 **Prohibition Against Contingent Fees.** General Contractor warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the General Contractor to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the General Contractor, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 28 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

General Contractor: An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to a Contract For Construction.

Construction Price: The dollar amount for which a General Contractor agrees to perform the Work set forth in a Contract For Construction.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract For Construction: A written agreement between the Owner and a General

Contractor for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

Contract For Professional Services: A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

Declaration Of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

Final Completion: The stage of construction when the Work has been completed in accordance with the Contract For Construction and the Owner has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner's Related Parties: Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in a Contract For Construction.

Project Design Schedule: The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.

